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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,217	09/22/2003	Joseph Ostrowski	20876.01	5725

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EXAMINER

KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/665,217	Applicant(s) OSTROWSKI ET AL.	
	Examiner Gerald B. Klebe	Art Unit 3618	<i>NEW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10, 15 and 16 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-14 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

GB Klebe
10 Nov 2004

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/22/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election / Restriction Response

1. Applicant's election filed 9/24/2004 of Species Group II, Figures 9-11, claims 1-9, 11-14, and 17-20 reading thereon, is acknowledged.

Noting that Applicant affirms the examiner's statement in the restriction/election requirement mailed 8/24/2004 that claim 1 is generic, the examiner, on further consideration, concludes that claim 1 is NOT generic. Since claim 1 includes the limitation "a baggage item" that is not found in the Species Group II, Figures 9-11 elected by Applicant, claim 1 is not generic.

Further, because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Consequently, the restriction is held to be proper and claims 10, and 15-16 are hereby withdrawn from further consideration as being drawn to non-elected species. An examination on the merits of claims 1-9, 11-14, and 17-20 follows, there being NO generic claim.

Specification - Objections

2. The specification is objected-to for the following informality:

Page 12, line 17 refers to item number 258 as "C-clamp"; item 258 is more properly termed a "C-bracket" as referred to at page 14, line 17.

Appropriate correction is required.

Claims Objections - Informalities

3. Claim 11 is objected-to for the following informality:

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Claim 11, in line 2: the word "to" is superfluous.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2, 5, 11, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "said connecting means" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "said connector means" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

For the purposes of further examination on the merits, these recitations will be interpreted as if reciting --said connecting member--.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 and 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Van Ligten (US 5820146), cited by Applicant.

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Van Ligten discloses a baggage scooter comprising:

(re: claim 1) a baggage item (refer Figs 2-4, and col 1, line 61 to col 2, line 5);

a first plate (Fig 1, item 6) having a top, a bottom and an outer circumference having a first edge (taken as its forward edge) and a second edge (taken as its rearward edge)

a second plate (item 1) having a top, a bottom and an outer circumference having a first edge (taken as its forward edge) and a second edge (taken as its rearward edge);

a connecting member (taken as the hinge 60) pivotally joining the first plate to the second plate wherein the second (rearward) edge of the first plate (6) is positioned near the first (forward) edge of the second plate (1);

a retractable handle member (32; and refer col 4, lines 4-5) attached to the first plate (refer col 3, line 64 to col 4, line 4);

a first rolling means (2) disposed along the bottom of the first plate (6);

a second rolling means (2') disposed along the bottom of the second plate (1);

a locking member (Fig 1, item 5, comprising 50 and 51; refer col 4, lines 20ff) securing the second plate in a riding position;

whereby the second plate is pivotal from a horizontal riding position to a vertical, stored, carrying position (refer Figs 5 and 6); and,

(re: claim 3) wherein the handle is a T-shaped handle (refer Fig 6, item 30); and,

(re: claim 4) wherein the handle is joined to the top of the first plate (via frame portion 3 and hinge 60); and,

(re: claim 5) wherein the handle (32) is joined to the top of the frame (3); and,

(re: claim 6) wherein the first rolling means (2) comprises at least one wheel; and,

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(re: claim 7) wherein the second rolling means (2') comprises at least one wheel; and,

(re: claim 8) wherein the first rolling means and the second rolling means each comprise two wheels (refer Fig 6).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Litgen (US 5820146), cited by Applicant, in view of Chien (US 5683164).

As discussed above, Van Litgen discloses all of the features of the invention of claim 1 from which claim 9 depends.

Van Litgen is silent regarding the use of roller blade (i.e., in-line skate) wheels for the first and second rolling means.

However, Chien teaches that it is old and known to use roller blade (i.e., in-line skate) wheels on scooters, travel cases, luggage carriers and other like non-motorized vehicles.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have used roller blade wheels for the first and second rolling means as a design choice based upon considerations of life-cycle cost in the expected environment of use of the baggage scooter.

10. Claims 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Litgen (US 5820146), cited by Applicant, in view of Altschul (US 6460866).

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As discussed above, Van Litgen discloses all of the features of the invention of claim 1 from which claim 12 and claim 17 each depend.

Van Litgen is silent regarding a feature wherein the baggage item is integrally formed to the first plate so that the baggage item itself may be ridden.

Altschul teaches a baggage scooter wherein the baggage item is integrally formed so that the baggage item itself may be ridden.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the baggage scooter of Van Litgen to have the baggage item integrally formed with the scooter in accordance with the teachings of Altschul in order that in instances in which the baggage was overly heavy, instead of carrying the baggage the baggage itself could be ridden as a scooter as suggested by the reference at column 1 lines 12-41.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Litgen (US 5820146), cited by Applicant, in view of Green, Sr. (US 6783147).

As discussed above, Van Litgen discloses all of the features of the invention of claim 1 from which claim 14 depends.

Van Litgen is silent regarding the features wherein the plates of the baggage scooter are provided with support members (mounted around the peripheral edges of the plates for additional strength).

However, Green teaches a baggage cart in which the carrier plates are provided with support members (around the peripheral edges).

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to have modified the baggage scooter of Van Litgen by adding support members mounted around the peripheral edges of the carrier plates of the cart in accordance with the teaching of Green, Sr. in order to provide edges to help prevent items being carried from sliding off the scooter carrier plates during transport over rough terrain.

Allowable Subject Matter

12. Claims 18-20 are allowed.

Claims 2, 11, and 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Prior Art made of Record

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art of Drake, Jr., of Hsu, of Lin, of Tiramani et al., of Lee, of Chen et al., of Jones, of Wu, and of Holland each show features in common with some of the other structures of the inventive concept disclosed in the instant application.

Conclusion

14. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, fax 703-872-9306; Mon.-Fri., 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Christopher P. Ellis, Art Unit 3618, at 703-308-2560.

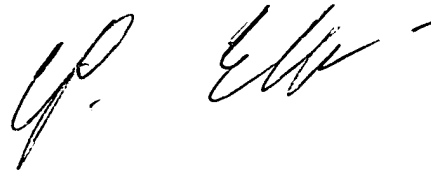
Official correspondence should be sent to the following TC 3600 Official Rightfax numbers as follows: Regular correspondence: 703-872-9326; After Finals: 703-872-9327; Customer Service: 703-872-9325.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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gbklebe / Art Unit 3618 / 10-Nov-04



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